



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201124031

MAR 21 2011

Uniform Issue List: 408.03-00

SE: T: EP: RA: T1

Legend:

Taxpayer A = *****

IRA B = *****

IRA C = *****

IRA D = *****

Financial Institution E = *****

Financial Institution F = *****

Financial Advisor G = *****

Amount 1 = \$*****

Amount 2 = \$*****

Dear *****:

This is in response to your request dated *****, as supplemented by communication dated *****, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A represents that he inadvertently received a distribution of Amount 1 from Individual Retirement Accounts (IRAs) B, C, and D. Taxpayer A asserts that the failure

to roll over Amount 1 within the 60-day period was due to the failure of Financial Advisor G to properly withhold taxes on distributions from IRAs B, C, and D for the year ****. Taxpayer A represents that the funds have not been used for any other purpose.

Taxpayer A represents that he established a system of regular, substantially equal periodic payments from IRAs B, C, and D through Financial Advisor G. IRAs B and C were maintained with Financial Institution E and IRA D was maintained with Financial Institution F. Originally, Taxpayer A opened IRA B and IRA C through Financial Advisor G which was, at the time, affiliated with Financial Institution E. Later, Financial Advisor G left Financial Institution E and affiliated itself with Financial Institution F, where Taxpayer A opened IRA D. In ****, Taxpayer A established a system of quarterly payments to ensure that each year he received a regular "substantially equal periodic payment" consistent with section 72(t) of the Code. Taxpayer A established quarterly payments that totaled, on a yearly basis, a gross amount approximately equal to Amount 2. In ****, Financial Advisor G committed an administrative error. This error resulted in Taxpayer A receiving the same after-tax sum as he had quarterly since ****, but his withholdings mistakenly increased for **** by Amount 1. Thus, while Taxpayer A received the same net amount overall each quarter from IRAs B, C, and D, additional tax withholdings (totaling Amount 1) were also mistakenly taken from the respective IRAs. Taxpayer A realized the error when his **** tax returns were prepared in **** where he noticed a large refund due him from the incorrectly withheld funds by Financial Advisor G.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement with respect to Amount 1 contained in section 408(d)(3) of the Code in this instance.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not

apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was caused by an error on the part of Financial Advisor G to correctly withhold amounts on Taxpayer A's series of substantially equal periodic payments from IRAs B, C, and D.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount 1 (excess withholdings) from IRAs B, C, and D. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into an eligible tax-deferred retirement vehicle. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

201124031

If you wish to inquire about this ruling, please contact ***** (Identification Number *****) at (**) ***-****. Please address all correspondence to *****.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

- Deleted copy of ruling letter
- Notice of Intention to Disclose